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## European refugee law and the situation of refugees in East Africa

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### Abstract

European refugee policy shapes and influences refugee policies and the situation of refugees around the world. It has created a body of binding rules and procedures on refugee protection, status determination procedures and social rights, and it has thus contributed to the evolution of international refugee law. This has an impact far beyond the borders of the European Union. This paper traces the similarities and discrepancies between the Common European Asylum System and the refugee protection systems in East African jurisdictions. The description of the respective laws and policies governing refugee status and procedural rights, refugees' access to social, economic and other rights, as well as durable solutions, shows that refugee protection systems in the European Union and in East African jurisdictions are structurally similar with regard to the restrictions placed on the rights of refugees, whereas positive aspects of a harmonised European refugee policy have little in common with the situation in East African jurisdictions.

### Keywords

East Africa, European refugee law, Refugee status, Refugee rights, Durable solutions

## Contents

1.	Introduction	3
2.	Refugee status and procedural rights	5
2.1	Progressive aspects of European refugee law in a comparative perspective	5
2.2	Restrictive aspects of European refugee law in a comparative perspective	6
3.	Beyond procedure: Refugees' access to social, economic and other rights	8
3.1	Refugee rights between camp and city	8
3.2	National variations in refugee policy within East Africa	9
4.	Durable solutions	13
4.1	Voluntary repatriation	13
4.2	Local integration and other local solutions	14
4.3	Resettlement and complementary pathways for admission to third countries	15
5.	Conclusion	17

## 1. Introduction

European refugee policy has created a body of rules and procedures on refugee protection, status determination procedures and social rights that is binding upon more than half of the countries in Europe. It has contributed to the evolution of international refugee law under the supervision of national and European courts that have authority to issue binding decisions. It has thus had an incommensurable impact on the realities of people seeking protection in the region, and beyond.<sup>1</sup>

The Common European Asylum System touches upon all aspects of refugee policy: the status determination procedure and the scope of international protection; the access to social and economic rights and other entitlements; and the operationalisation of durable solutions.

With regard to refugee status and procedural rights, the harmonisation of European refugee law has cemented the recognition of gender-based persecution and of sexual minorities as a social group as well as non-state actors as agents of persecution (see Article 10(1) lit. d and Article 6 lit. c of Council Directive 2004/83/EC of 29 April 2004 – ‘Qualification Directive’). It has ensured that people fleeing from the death penalty, torture and war be granted a harmonised legal status and specific rights (Article 15 of the Qualification Directive).<sup>2</sup> However, throughout the harmonisation process, the European Union (EU) has debated how to restrict the access to asylum, and how to contain refugee movements through the externalisation of protection.<sup>3</sup> This has led to the development and implementation of restrictive concepts and practices, including the internal flight alternative and safe country concepts (Article 8 of the Qualification Directive; Articles 35s. of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 – ‘Asylum Procedures Directive’).

While harmonisation has contributed to improving the access of asylum-seekers to social, economic and other rights through the adoption of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 (‘Reception Conditions Directive’), it has also linked restrictions on social and economic rights to restrictive procedural concepts. Harmonisation has also established specific safeguards in terms of return procedures, which has progressively transformed return from an instrument at the discretion of the Member States into a binding instrument (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 – ‘Returns Directive’).

With regard to durable solutions, most EU Member States have created pathways to permanent residence and naturalisation for refugees. The ongoing reform of the Common European Asylum System will almost certainly lead to an even more comprehensive system that will leave little space for domestic policies, and it is very likely to introduce further restrictions to the rights of refugees.<sup>4</sup>

Far-reaching changes in refugee law and policy are not limited to Europe. For instance, several African countries have withdrawn the responsibility from the United Nations High Commissioner for Refugees (UNHCR) for refugee status determination and implemented national status determination procedures.<sup>5</sup> In Kenya, this process is ongoing; there are therefore two competing registration systems in use.<sup>6</sup>

This paper traces the similarities and discrepancies between the Common European Asylum System and the refugee protection systems in East Africa (which – for the purposes of this paper – shall be understood as the region encompassing the territories of the Member States of the East African Community: Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda). The description of the respective laws and policies governing refugee status and procedural rights, refugees’ access to social, economic and other rights, as well as durable solutions, shows that refugee protection systems in the European Union and in East African jurisdictions are structurally similar with regard to the restrictions placed on the status and rights of refugees, whereas positive aspects of a harmonised European refugee policy remain largely unparalleled in East African jurisdictions. As the New York Declaration for Refugees

1 H. Lambert, ‘Conclusion: Europe’s Normative Power in Refugee Law’, in H. Lambert *et al.* (eds.), *The Global Reach of European Refugee Law*, Cambridge, Cambridge University Press, 2013, 258–266, 258; H. Lambert, ‘Introduction: European Refugee Law and Transnational Emulation’, in H. Lambert *et al.* (eds.), *The Global Reach of European Refugee Law*, Cambridge, Cambridge University Press, 1–24, 1.

2 G. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, Oxford, Oxford University Press, 2007, 325.

3 J. Gleitze, ‘Zonen der Rechtlosigkeit – kein Weg nach Europa? Italienische Flüchtlingspolitik in Zeiten der Abschottung’, in W. Benz *et al.* (eds.), *Von Evian nach Brüssel. Menschenrechte und Flüchtlingsschutz 70 Jahre nach der Konferenz von Evian*, Karlsruhe, Loeper, 2008, 242–256, 242; S. Huguenet, *Droit de l’Asile: Le Projet Britannique d’Externalisation*, Paris, L’Harmattan, 2004; M. Pelzer, ‘Die Strategien der EU zur Auslagerung des Flüchtlingsschutzes und Vorverlagerung der Grenzabschottung in die östlichen Nachbarstaaten’, in W. Benz *et al.* (eds.), *Von Evian nach Brüssel. Menschenrechte und Flüchtlingsschutz 70 Jahre nach der Konferenz von Evian*, Karlsruhe, Loeper, 2008, 167–183, 167; J. Valluy, *Rejet des exilés. Le grand retournement du droit de l’asile*, Bellecombe-en-Bauges, Éditions du Croquant, 2009.

4 C. Tometten, ‘Worüber Jamaika wirklich diskutieren müsste’, *Legal Tribune Online*, Oct. 2017, available at: [www.lto.de/recht/hintergruende/h/asyl-deutschland-obergrenze-europa-gemeinsames-asylsystem/](http://www.lto.de/recht/hintergruende/h/asyl-deutschland-obergrenze-europa-gemeinsames-asylsystem/) (last visited 15 Nov. 2019).

5 A. Edwards, ‘Refugee Status Determination in Africa’, *African Journal of International and Comparative Law*, 14, 2006, 204–233; M. Sharpe, *The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, Geneva, UNHCR, Legal and Protection Policy Research Series, Jan. 2013, 7s.

6 UNHCR, ‘Registration’, available at: [www.unhcr.org/ke/registration](http://www.unhcr.org/ke/registration) (last visited 15 Nov. 2019); A. Lindley, ‘Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya’, *Refugee Survey Quarterly*, 30, 2011, 4–49, 4; J. Milner, *Refugees, the State and the Politics of Asylum in Africa*, Basingstoke and New York, Palgrave Macmillan, 2009, 84s.; E. Odhiambo-Abuya, ‘United Nations High Commissioner for Refugees and Status Determination *Imtaxaan* in Kenya: An Empirical Survey’, *Journal of African Law*, 48(2), 2004, 187–206, 187.

and Migrants adopted by the United Nations General Assembly on 19 September 2016 and the Global Compact on Refugees adopted by the United Nations General Assembly on 17 December 2018 emphasise the importance of international cooperation and responsibility-sharing, these findings underline an international trend that tends to be detrimental to refugees.

## 2. Refugee status and procedural rights

The Common European Asylum System has contributed to the advancement of refugee status by clarifying that the refugee definition encompasses persecution on account of gender or sexual orientation (Article 10(1) lit. d of the Qualification Directive) as well as persecution by non-state actors (Article 6 lit. c of the Qualification Directive). It has widened the scope of international protection to persons facing serious violations of specific human rights by making the concept of subsidiary protection binding for all EU Member States (Article 15 of the Qualification Directive).<sup>7</sup> But it has also restricted access to international protection, especially by means of safe country concepts (Articles 35s. of the Asylum Procedures Directive).

In East African jurisdictions, persons fleeing a general threat of violence may claim refugee status in line with the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa and its wider refugee definition. Laws and policies concerning access to protection in East African jurisdictions also show some level of similarity with restrictive EU concepts. However, certain reasons for persecution such as sexual orientation are not explicitly recognised by domestic refugee law in East African jurisdictions and – given the marginalisation and, at times, the criminalisation of sexual minorities – refugee policies tend to consider that they do not fall within the ambit of refugee law.

### 2.1 *Progressive aspects of European refugee law in a comparative perspective*

European refugee law provides for a specific understanding of persecution as a central feature of the refugee definition contained in the 1951 Convention relating to the Status of Refugees as well as from its extension of international protection to persons who do not fall within the ambit of this definition but are nevertheless under threat of severe human rights violations.

As touched upon previously, the Qualification Directive, which is currently under reform, has provided a more detailed definition of all elements of persecution. The positive impact of its definition of the reasons for persecution and the actors of persecution is obvious. Under European refugee law, for instance, gender-based persecution and persecution on account of gender identity and sexual orientation fall under the refugee definition (Article 10(1) lit. d of the Qualification Directive). European refugee law also leaves no doubt that non-state actors may be actors of persecution if the state is unable or unwilling to provide protection against their acts (Article 6 lit. c of the Qualification Directive).

In East African jurisdictions, while there is some awareness about gender-based persecution, there is a lack of protection for sexual minorities. Consensual sexual activities between adult men are still considered to fall within the ambit of provisions introduced by the former colonial occupying powers that criminalise sexual behaviour against the order of nature in Kenya (sections 162, 163 and 165 of the Penal Code – the constitutionality of the criminalisation of consensual same-sex sexual activities was confirmed by the High Court at Nairobi on 24 May 2019), South Sudan (sections 248 and 249 of the 2008 Penal Code Act), Tanzania (sections 138A, 154, 155, 157 of the 1945 Tanzania Penal Code as revised by the 1998 Sexual Offences Special Provisions Act and sections 132, 150–154 and 158 of the 1934 Zanzibar Penal Code as amended in 2004) and Uganda (sections 145, 146 and 148 of the 1950 Penal Code Act). In Burundi, where such provisions did not exist, consensual same-sex sexual activities have been criminalised since 2009 (Article 567 Loi No. 1/05 du 22 avril 2009 portant révision du Code pénal). Only Rwanda does not criminalise consensual same-sex sexual activities. Against this backdrop, it is hardly surprising that sexual orientation is not considered a valid basis for an asylum claim in East African jurisdictions.

The recognition of non-state actors as agents of persecution has a limited relevance for refugee protection in Africa, since Article 1(2) of the 1969 Convention provides for an additional refugee definition, according to which the term ‘refugee’ shall also apply to:

[e]very person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

This definition does not require a link between the threats a refugee faces in their country of origin and a specific agent of persecution.<sup>8</sup> The additional refugee definition contained in the 1969 Convention is therefore similar to the concept of subsidiary protection. Both instruments are designed to afford protection to persons fleeing war and other situations in which their fundamental human rights are at threat. Indeed, subsidiary protection in the EU was developed as a response to the obligations of EU Member States to respect the human rights of non-citizens as enshrined in the 1950 European Convention on Human Rights.<sup>9</sup> Whereas human rights concerns were not at the core of the debate about the drafting of the 1969 Convention,<sup>10</sup> its additional refugee definition does indeed enhance

7 G. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, 325.

8 Sharpe, *The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*.

9 J.-F. Durieux, ‘The Vanishing Refugee: How EU Asylum Law Blurs the Specificity of Refugee Protection’, in H. Lambert *et al.* (eds.), *The Global Reach of European Refugee Law*, Cambridge, Cambridge University Press, 2013, 225–257, 246s.

10 Edwards, ‘Refugee Status Determination in Africa’, 208s.; C. D’Orsi, ‘The AU Convention on Refugees and the Concept of Asylum’, *Pace International Law Review Online Companion*, 2012, 220–254, 220; M. Sharpe, ‘The Impact of European Refugee Law on the Regional, Subregional and National Planes in Africa’, in H. Lambert *et al.* (eds.), *The Global Reach of European Refugee Law*, Cambridge, Cambridge University Press,

protection for the rights of its beneficiaries.<sup>11</sup>

Both instruments share an approach focused on the individual situation of the person seeking protection since it is that person that needs to meet the criteria set out in the corresponding texts.<sup>12</sup> Both instruments are therefore instruments of individual protection as much as the 1951 Convention, and not merely agreements between states about procedures to follow in cases of mass displacement. It has been argued that both instruments are designed to address large-scale movements,<sup>13</sup> but nothing in their provisions indicates that they do not apply in individual cases that occur outside large-scale movements.<sup>14</sup> The same holds true for the 1951 Convention: nothing in this Convention indicates that it shall not apply in the presence of large-scale movements.<sup>15</sup> Rather, its historical background is proof of the opposite: the failure of the international community to offer effective protection to those fleeing from Germany and the territories under control of Germany and its allies owing to the fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group is proof that persecution in the sense of the 1951 Convention might, indeed, occur on a large scale.

## 2.2 Restrictive aspects of European refugee law in a comparative perspective

The most prominent restrictive aspect of European refugee law regarding status and procedural rights concerns the safe country concepts. Safe country concepts include, on the one hand, the safe country of origin concept which either restricts procedural and other rights of persons seeking international protection from specific countries of origin deemed as safe (Article 36 of the Asylum Procedures Directive), or altogether prevents them from applying for asylum (this is the objective of the so-called 'Aznar Protocol'<sup>16</sup>). On the other hand, safe third country concepts restrict the access to the status determination procedure in the event that the asylum-seeker is considered to be safe elsewhere, either because they have already been granted protection in a third state (first country of asylum principle, see Article 35 of the Asylum Procedures Directive) or because they can reasonably be expected to find protection in a third state that is typically – but not necessarily – linked to the applicant's personal circumstances.

Whereas the safe country of origin principle is hard to assert in the East African context, given the all too obvious lack of safety in the principal countries of origin, this does not hold true for the safe third country concept.<sup>17</sup> In Uganda, the first country of asylum principle is explicitly enshrined in section 14 of the 2010 Refugees Regulations and regularly applied with regard to the applications of Eritrean nationals.<sup>18</sup> Section 4 of the 1998 Refugees Act (Tanzania) provides that a person shall not be considered a refugee if 'prior to his entry into Tanzania, he has transited through one or more countries and is unable to show reasonable cause for failure to seek asylum in those countries'.

Beyond the provisions of national refugee legislation, the safe third country concept also helps understanding of the nature and relevance of the cooperation between Rwanda, Uganda and Israel on refugee affairs. In refugee policy, Israel has undergone a very similar development to many African countries. UNHCR was responsible for determining refugee status from the early 1980s until 2002, when a change in procedures formally subordinated UNHCR's decision to the approval of the Ministry of the Interior; between 2009 and 2011, responsibility for status determination procedures was fully transferred to the Ministry of the Interior and a full-fledged procedural system was set up.<sup>19</sup> Subsequently, Israel faced a significant increase in asylum applications submitted mostly by Eritrean and Sudanese nationals who entered Israel from Egypt. The number of these asylum-seekers who obtained refugee status in Israel, however, is extremely low<sup>20</sup> and stands in striking contrast to the recognition rates of Sudanese and Eritrean nationals in other countries: according to the European Statistical Office, the first recognition rate in the European Union was

178–200, 180s.; T. Wood 'Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention's Expanded Refugee Definition', *International Journal of Refugee Law*, 26, 2014, 555–580, 556s.

11 Edwards, 'Refugee Status Determination in Africa', 222s.

12 J.-F. Durieux and A. Hurwitz, 'How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees', *German Yearbook of International Law*, 47(105), 2004, 105–159, 135; G. Okoth-Obbo, 'Thirty Years On: A Legal Review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa', *Refugee Survey Quarterly*, 20(1), 2001, 79–138, 111.

13 A. Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, Ithaca and London, Cornell University Press, 2013; Milner, *Refugees, the State and the Politics of Asylum in Africa*, 7.

14 Durieux and Hurwitz, 'How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees', 116s.; Okoth-Obbo, 'Thirty Years On: A Legal Review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa', 118; M. Sharpe, 'The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions', *McGill Law Journal*, 58, 2012, 95–147, 120; M. Sharpe, *The Regional Law of Refugee Protection in Africa*, Oxford, Oxford University Press, 2018, 65s.

15 Durieux and Hurwitz, 'How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees', 116s.; Sharpe, 'The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions', Sharpe, *The Regional Law of Refugee Protection in Africa*, 66s.

16 Durieux, 'The Vanishing Refugee: How EU Asylum Law Blurs the Specificity of Refugee Protection', 230.

17 B. Rutinwa, 'The End of Asylum? The Changing Nature of Refugee Policies in Africa', *Refugee Survey Quarterly*, 21(1–2), 2002, 12–41, 33.

18 International Refugee Rights Initiative, *Eritrean Refugees in Kampala and the Ugandan Asylum System*, Kampala, International Refugee Rights Initiative, Jul. 2018, 4.

19 T. R. Müller, 'Realising Rights Within the Israeli Asylum Regime: A Case Study Among Eritrean Refugees in Tel Aviv', *African Geographical Review*, 37(2), 2018, 134–145, 136; D. Stevens, 'Between East and West: The Case of Israel', in H. Lambert et al. (eds.), *The Global Reach of European Refugee Law*, Cambridge, Cambridge University Press, 2013, 132–155, 132.

20 The Hotline for Refugees and Migrants, *Asylum Proceedings in Israel*, Tel Aviv-Yafo, The Hotline for Refugees and Migrants, Oct. 2018, available at: <https://hotline.org.il/wp-content/uploads/2018/10/Eng-Web-RSD-Report-HRM-17Oct2018.pdf> (last visited 15 Nov. 2019);



at 83% for Eritrean nationals and at 55% for Sudanese nationals.<sup>21</sup> Although many of these persons found a way to survive with a precarious status, many of them were detained, in a manifest attempt by the Israeli government to create a hostile environment for asylum-seekers.<sup>22</sup> Concomitantly, Israel sealed its border with Egypt and thus the application numbers were reduced to close to zero.<sup>23</sup> In addition, Israel has been transferring Eritrean and Sudanese nationals to third countries for a number of years under unpublished agreements with Rwanda and Uganda.<sup>24</sup> These agreements have apparently been formalised recently, although Rwanda and Uganda contest their existence. This has led to a tremendous mobilisation in Israeli civil society.<sup>25</sup>

Although transferral from Israel to Rwanda and Uganda is so far dependent on the formal agreement of the person concerned (the voluntary character of their consent being highly contested<sup>26</sup>), it may nevertheless be described as an application of the safe third country concept: in order to legitimise the transfer of asylum-seekers, Rwanda and Uganda must be considered as safe from an Israeli perspective. This view is held by the Israeli High Court of Justice in its ruling of 28 August 2017 (Administrative Appeal No. 8101/15 – *Zegete vs. Minister of the Interior*) where it uses the term ‘safe third country’.

Eritrean and Sudanese nationals who arrive in Rwanda and Uganda may, in principle, apply for asylum and are likely to be granted refugee status in terms of either the 1951 Convention or the 1969 Convention. However, persons transferred from Israel are not granted access to the national status determination procedures.<sup>27</sup> To legitimise this policy, Rwanda and Uganda must apply the third safe country concept to Israel (at least implicitly) and argue that the persons concerned have left a safe third country voluntarily and that their asylum claims may therefore be considered inadmissible.

These findings are highly relevant for policy debates in the EU because they show that the safe third country concept has the potential to prevent genuine refugees from accessing protection anywhere in the world, at least if it is applied without a geographical link, as proposed in the reform of the Common European Asylum System. The experience from Rwanda also shows that the third safe country concept also runs against efforts to prevent secondary movements. To seek effective protection, people who are deprived of protection in East African jurisdictions are likely to end up on the move again, some even reaching European shores after a hazardous journey through Libya and across the Mediterranean Sea.

21 EUROSTAT, *EU Member States Granted Protection to More Than 300 000 Asylum Seekers in 2018*, Apr. 2019, available at: <https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496> (last visited 15 Nov. 2019).

22 The Hotline for Refugees and Migrants, *Asylum Seekers from Eritrea and Sudan in Israel*, Tel Aviv-Yafo, The Hotline for Refugees and Migrants, Dec. 2017, available at: <https://hotline.org.il/en/asylum-seekers-from-eritrea-and-sudan-in-israel-december-2017/> (last visited 15 Nov. 2019).

23 Müller, ‘Realising Rights Within the Israeli Asylum Regime: A Case Study Among Eritrean Refugees in Tel Aviv’, 135; Stevens, ‘Between East and West: The Case of Israel’.

24 International Refugee Rights Initiative, *Eritrean Refugees in Kampala and the Ugandan Asylum System*, 6.

25 M. Lidman, ‘Facing Deportation, Asylum Seekers Find Refuge with ‘Sanctuary’ Host Families’, *The Times of Israel*, Mar. 2018, available at: [www.timesofisrael.com/facing-deportation-asylum-seekers-find-refuge-with-sanctuary-host-families/](http://www.timesofisrael.com/facing-deportation-asylum-seekers-find-refuge-with-sanctuary-host-families/) (last visited 15 Nov. 2019); I. Lior, ‘20,000 Israelis Protest Deportation of African Asylum Seekers’, *Haaretz*, Feb. 2018, available at: [www.haaretz.com/israel-news/over-10-000-israelis-protests-deportation-of-african-asylum-seekers-1.5846472](http://www.haaretz.com/israel-news/over-10-000-israelis-protests-deportation-of-african-asylum-seekers-1.5846472) (last visited 15 Nov. 2019).

26 International Refugee Rights Initiative, *‘I was Left with Nothing’: ‘Voluntary’ Departures of Asylum Seekers from Israel to Rwanda and Uganda*, Kampala, International Refugee Rights Initiative, Sept. 2015; The Hotline for Refugees and Migrants, *Deported to the Unknown*, Tel Aviv-Yafo, The Hotline for Refugees and Migrants, Dec. 2015, available at: <https://hotline.org.il/wp-content/uploads/2015/12/Deported-To-The-Unkown.pdf> (last visited 15 Nov. 2019).

27 International Refugee Rights Initiative, *‘I was Left with Nothing’: ‘Voluntary’ Departures of Asylum Seekers from Israel to Rwanda and Uganda*, 2.

### 3. Beyond procedure: Refugees' access to social, economic and other rights

Refugee status and the ways in which it is recognised are obviously at the core of refugee protection. But the life realities of refugees are shaped by many more laws and regulations that link their status with specific rights and specific restrictions. This is most evident with regard to their social and economic rights: the right to education and to work, access to healthcare, and other social benefits. But it also concerns refugees' freedom to move within the host country and beyond its borders. Many of these rights are enshrined in the 1951 Convention and although the 1969 Convention fails to explicitly mention these rights, some authors have convincingly argued that the guarantees of the 1951 Convention equally apply to the beneficiaries of international protection in terms of the 1969 Convention.<sup>28</sup> However, both in the EU and in East African jurisdictions, the guarantees of the international texts are not equally implemented depending on the situation in which refugees find themselves.

In the EU, restrictions to refugees' rights mostly apply during the status determination procedure. In Germany, for instance, the laws governing the rights of asylum-seekers during an ongoing procedure restrict freedom of movement insofar as they assign asylum-seekers to specific municipalities. This designation of residence entails a prohibition to leave these municipalities (even temporarily), any breach of which constitutes a criminal offence. Although these restrictions have partially been lifted in the past (they have subsequently been reintroduced for some groups), they have been included in European refugee law and implemented in other countries, such as Greece (Law 4375 of 2016). After recognition, however, refugees in the EU are supposed to enjoy freedom of movement within the host country and access to almost equal social and economic rights, including grants and benefits, study loans, employment and housing.

#### 3.1 Refugee rights between camp and city

Restrictions placed on refugees in East African jurisdictions are similar to their European counterparts. However, they are not, by and large, confined to an ongoing status determination procedure, but tend to apply, to varying degrees, throughout the presence of a refugee in the host country.

In the context of East African urban centres, refugees – recognised as such or not – face a situation of particular vulnerability and precarity, as they generally have no access to specific social benefits.<sup>29</sup> Although they may be entitled to benefits generally accessible to citizens, including school and health facilities, these resources are often unavailable in practice. Urban refugees are thus led to self-organise in order to cater for their needs in more or less structured organisations such as Rema Ministries in Bujumbura, Tushirikiane Afrika in Nairobi and various youth organisations in Kampala.<sup>30</sup>

Unlike urban situations in which refugees are largely left to cater for themselves, the situation in the camps is governed by a tight set of rules and regulations. This is the result of a shift that occurred over the past few decades, from a relatively liberal approach, emphasising integration over securitisation and identity, towards encampment.<sup>31</sup> Encampment entails restrictive conditions placed on refugees, including limited physical security, limited freedom of movement, limited civil and political rights, the lack of legal status and a limited ability to engage in income-generating activities.<sup>32</sup> The infiltration of refugee camps by armed groups has received wide coverage in the aftermath of the Rwandan genocide<sup>33</sup> and is an ongoing problem in East Africa.<sup>34</sup> It also puts the encamped population at risk of

28 Durieux and Hurwitz, 'How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees', 125s.; Sharpe, 'The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions', 124s.

29 Asylum Access, *No Place Called Home: A Report on Urban Refugees Living in Dar Es Salaam*, Dar Es Salaam, Asylum Access, Nov. 2011; A. O'Loughlen and C. McWilliams, 'The Nexus of Displacement, Asset Vulnerability and the Right to the City: The Case of the Refugees and Urban Poor of Dar Es Salaam, Tanzania', *International Journal of Urban Sustainable Development*, 9(1), 2017, 21–45, 21s.; S. Pavanello et al., *Hidden and Exposed: Urban Refugees in Nairobi, Kenya*, London, Overseas Development Institute, Humanitarian Policy Group Working Paper, Mar. 2010, available at: [www.odhpn.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5858.pdf](http://www.odhpn.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5858.pdf) (last visited 15 Nov. 2019); Refugee Law Project, 'A Drop in the Ocean': Assistance and Protection for Forced Migrants in Kampala, Kampala, Refugee Law Project, Working Paper, 16 May 2005.

30 R. Ayinkamiye, *The Strategies Used by State and Non State Actors in Empowering the Refugees in Kenya: A Case Study of Tushirikiane Afrika (TUSA)*, Nairobi, University of Nairobi, Sept. 2015; M. Macchiavello, *Forced Migrants as an Under-utilized Asset: Refugee Skills, Livelihoods, and Achievements in Kampala, Uganda*, Geneva, UNHCR, New Issues in Refugee Research, Working Paper No. 95, Oct. 2003.

31 Milner, *Refugees, the State and the Politics of Asylum in Africa*; Rutinwa, 'The End of Asylum? The Changing Nature of Refugee Policies in Africa', 12s.

32 Durieux and Hurwitz, 'How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees', 125.

33 D. Johnson, *Kongo: Kriege, Korruption und die Kunst des Überlebens*, Frankfurt a.M., Brandes & Apsel, 2009; D. Johnson et al., *Tatort Kongo: Prozess in Deutschland. Die Verbrechen der ruandischen Miliz FDLR und der Versuch einer juristischen Aufarbeitung*, Berlin, Ch. Links, 2016; G. Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*, Oxford, Oxford University Press, 2009; D. van Reybrouck, *Congo: Een geschiedenis*, Amsterdam, De Bezige Bij, 2000; M. Wrong, *In the Footsteps of Mr Kurtz: Living on the Brink of Disaster in the Congo*, London, Fourth Estate, 2000.

34 M. Boyce and F. Vigaud-Walsh, *Asylum Betrayed: Recruitment of Burundian Refugees in Rwanda*, Washington, Refugees International, Field Report, Dec. 2015, available at: [www.refugeesinternational.org/reports/2015/12/14/rwanda](http://www.refugeesinternational.org/reports/2015/12/14/rwanda) (last visited 15 Nov. 2019); J. Crisp, 'Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions', *Refugee Survey Quarterly*, 29(3), 2010, 1–27, 7s.; B. J. Jansen, 'The Refugee Camp as Warscape: Violent Cosmologies, "Rebelization", and Humanitarian Governance in Kakuma, Kenya', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 7(3), 2016, 429–441, 429s.; G. Loescher and J. Milner, 'Security Implications of Protracted



violence, especially sexual exploitation<sup>35</sup> and child marriage,<sup>36</sup> in a regional context of pervasive sexual violence that is often among the reasons for flight.<sup>37</sup> The assignment of refugees to camps restricts their ability to choose whether or not they want to live in a camp and in which camp they would like to live. Despite claims to the contrary, refugees are – in law and/or in practice – not able to freely move outside the camp as such movement is subject to the possession of a so-called ‘movement pass’. Camp authorities have discretion to deliver such passes and the practice varies widely depending on the country, the specific camp, the applicant and time.<sup>38</sup> In the camps, social and economic rights are, above all, guaranteed by international aid, usually delivered in the form of charity, not entitlement. As most aid is to be delivered in camps, these resources are lacking in urban centres and governments fail to take up responsibility accordingly. This discrepancy is exacerbated by the fact that UNHCR and other international actors strongly favour interventions in camps, despite the focus on urban refugee situations in recent years.<sup>39</sup>

### 3.2 National variations in refugee policy within East Africa

Kenya is widely seen as the model example for encampment. Most of the refugees in Kenya currently live in Kakuma and Dadaab, two of the world’s largest refugee camps created to accommodate refugees from several African countries in the early 1990s.<sup>40</sup> This influx marks a first shift in Kenyan refugee policy, from a relatively open approach towards a stronger focus on containment.<sup>41</sup> However, in the beginning, refugees were allowed to settle in the cities if they were able to sustain themselves. Following terrorist attacks in 2012 and the increasing resentment towards Somalis,<sup>42</sup> the country established a strict encampment policy. New arrivals were assigned to one of the remaining camps and urban refugees were ordered to relocate to Dadaab or Kakuma. However, the High Court at Nairobi (Milimani Bench) found that this violated the constitutional right to free movement; therefore, the decision was invalidated. The government reissued a revised relocation order in 2014, invoking reasons of public security, and this order was not invalidated by the courts. Although refugee camps in Kenya are not fenced, refugees in camps are not allowed to leave the camp area and they have no right to seek employment outside the camps.<sup>43</sup> Their access to other social and economic rights, despite being guaranteed by the Kenyan Constitution, is restricted by the laws and the implementation thereof;<sup>44</sup> the

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Refugee Situations’, *The Adelphi Papers*, 45(375), 2005, 23–34; Milner, *Refugees, the State and the Politics of Asylum in Africa*; E. Morris and S. J. Stedman, ‘Protracted Refugee Situations, Conflict and Security: The Need for Better Diagnosis and Prescription’, in G. Loescher et al. (eds.), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, Tokyo, United Nations University Press, 2008, 69–84, 69.

35 S. Buckley-Zistel et al., ‘Sexuelle und geschlechterbasierte Gewalt an Frauen in kriegsbedingten Flüchtlingslagern. Ein Literaturüberblick’, *PERIPHERIE*, 34(133), 2014, 71–89; U. Krause, ‘A Continuum of Violence? Linking Sexual and Gender-based Violence during Conflict, Flight, and Encampment’, *Refugee Survey Quarterly*, 34, 2015, 1–19, 10s.; U. Krause, ‘Zwischen Schutz und Scham? Konfliktbedingte Flüchtlingsiedlungen, Gewalt und Geschlechterverhältnisse’, *PERIPHERIE*, 35(138/139), 2015, 235–259, 235s.; U. Krause, ‘Hegemonie von Männern? Flüchtlingslager, Maskulinitäten und Gewalt in Uganda’, *Soziale Probleme*, 27, 2016, 119–145, 119s.; B. Lukunka, ‘New Big Men: Refugee Emasculation as a Human Security Issue’, *International Migration*, 50(5), 2012, 130–141, 130; A. C. Okot et al., *Suffering in Silence: A Study of Sexual and Gender Based Violence (SGBV) in Pabbo Camp, Gulu District, Northern Uganda*, Jan. 2005, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/BEFB77D29CC17FE74925702200095601-unicef-uga-15jun.pdf> (last visited 15 Nov. 2019); E. Pittaway and L. Bartolomei, ‘Refugees, Race, and Gender: The Multiple Discrimination Against Refugee Women’, *Refuge*, 19(6), 2001, 21–32, 21s.

36 Refugee Law Project, ‘Giving Out Their Daughters for Their Survival’: *Refugee Self-Reliance, “Vulnerability”, and the Paradox of Early Marriage*, Kampala, Refugee Law Project, Working Paper No. 20, Apr. 2007.

37 M. Eriksson Baaz and M. Stern, ‘Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)’, *International Studies*, 53, 2009, 495–518, 495s.; S. Meger, ‘Rape of the Congo: Understanding Sexual Violence in the Conflict in the Democratic Republic of Congo’, *Journal of Contemporary African Studies*, 28(2), 2010, 119–135, 119s.; Refugee Law Project, *Promoting Accountability for Conflict-Related Sexual Violence Against Men: A Comparative Legal Analysis of International and Domestic Laws Relating to IDP and Refugee Men in Uganda*, Kampala, Refugee Law Project, Working Paper No. 24, Jul. 2013.

38 Z. Lomo, ‘The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work’, *Berkeley Journal of International Law*, 18(2), 2000, 268–284, 281.

39 T. Kaiser, ‘Between a Camp and a Hard Place: Rights, Livelihood and Experiences of the Local Settlement System for Long-term Refugees in Uganda’, *Journal of Modern African Studies*, 44(4), 2006, 597–621, 598.

40 A. Iyer Siddiqi, ‘Dadaab (Kenya). L’histoire architecturale d’un territoire non identifié’, in M. Agier (ed.), *Un monde de camps*, Paris, La Découverte, 2014, 149–163, 149; B. J. Jansen, ‘Kakuma (Kenya). Le camp dans l’économie de la ville, de la région et du monde’, in M. Agier (ed.), *Un monde de camps*, Paris, La Découverte, 2014, 164–177, 164; B. J. Jansen, ‘Digging Aid’: The Camp as an Option in East and the Horn of Africa’, *Journal of Refugee Studies*, 29(2), 2015, 149–165, 153s.; P. Kagwanja and M. Juma, ‘Somali Refugees: Protracted Exile and Shifting Security Frontiers’, in G. Loescher et al. (eds.), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, Tokyo, United Nations University Press, 2008, 214–247, 214; T. Kaiser, ‘Sudanese Refugees in Uganda and Kenya’, in G. Loescher et al. (eds.), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, Tokyo, United Nations University Press, 2008, 248–275, 248; Lindley, ‘Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya’, 14s.; Milner, *Refugees, the State and the Politics of Asylum in Africa*, 84s.; Wood ‘Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention’s Expanded Refugee Definition’, 566s.

41 Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, 143s.

42 Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, 146.

43 Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, 146; B. J. Jansen, ‘The Accidental City: Urbanisation in an East-African Refugee Camp’, *Urban Agriculture Magazine*, 4, 2009, 11–12; Sharpe, *The Regional Law of Refugee Protection in Africa*, 227; S. Sytnik, *Rights Displaced: The Effects of Long-term Encampment on the Human Rights of Refugees*, London, Refugee Law Initiative, Working Paper No. 4, May 2012, 18s.

44 S. Carciotto and C. D’Orsi, *Access to Socio-Economic Rights for Refugees: A Comparison Across Six African Countries*, Cape Town, The Scalabrini

conflict between the constitutional norms and the legal practice is a challenge that pervades the Kenyan judicial system. The camps have thus evolved into 'accidental cities' that, over time, challenge the Kenyan state to deal with the question of their socio-economic integration into the wider national setting.<sup>45</sup>

In the past few years, the government has followed a relatively opaque strategy. It has announced its determination to close Dadaab but has refrained from reiterating this decision publicly, stressing the importance of voluntary repatriation. A new Refugees Bill that would grant refugees certain social and economic rights was passed by the National Assembly on 13 June 2017. However, before the contested 2017 presidential elections, the President refused his assent to the Bill, albeit on procedural grounds. In practice, whereas urban refugees have never entirely followed the order to relocate to the camps, new arrivals have also been allowed or tolerated to settle in Nairobi, probably along ethnic and political lines.<sup>46</sup>

It is in Tanzania, the East African country formerly known as the most liberal in its refugee policy, that encampment is arguably the harshest today. Under the Nyerere presidency, Tanzania hosted refugees in village settlements that were largely separated from local communities, but well supplied with services.<sup>47</sup> This policy was inspired by the pan-African ideology of the early Tanzanian governments after independence and a situation in which most of the refugees on African soil came from countries that were still caught in liberation and anti-Apartheid struggles. Refugees might also have been seen as 'an opportunity to attract the resources necessary to encourage the settlement and economic development of under-populated regions'.<sup>48</sup> Additionally, refugee reception in Tanzania benefited from substantial external support, both financial and technical.<sup>49</sup> The mass displacement of refugees fleeing genocide and renewed conflict in Burundi, Rwanda and Zaire in the early and mid-1990s led the Tanzanian government to shift its approach towards a strict encampment policy, closing the border with Burundi in March 1995, expelling the majority of Rwandan refugees in December 1996 and subsequently setting out a restrictive National Refugee Policy in 2003.<sup>50</sup> This policy codified the restrictions placed on refugees' freedom of movement and exercise of economic activity which had already been put in place prior to 2003, while dismissing naturalisation as a durable solution, in stark contrast to the Tanzanian policies under Nyerere's government.<sup>51</sup> Refugees in Tanzania could thus be divided into three categories: those arriving prior to the 1990s and living in village-like settlements, those arriving in the 1990s and living in camps and those arriving informally and living outside any support structures.<sup>52</sup>

In contrast to the strict approach taken in its National Refugee Policy, Tanzania agreed to offer naturalisation for the 1972 Burundian refugees, with the international community providing financial incentives for this step. However, the international community did not meet its pledges and Tanzania shifted its refugee policy back to a containment strategy. Refugees are today obliged to live in remote camps where self-sufficiency is as illusory as the reception of adequate rations.

Uganda is generally seen as particularly generous towards refugees.<sup>53</sup> It has replaced its 1960 Control of Alien

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Institute for Human Mobility in Africa, Mar. 2017, 31s.; Sharpe, *The Regional Law of Refugee Protection in Africa*, 227.

45 Jansen, 'The Accidental City: Urbanisation in an East-African Refugee Camp'; Jansen, "Digging Aid": The Camp as an Option in East and the Horn of Africa, 150s.

46 E. Campbell et al., *Navigating Nairobi: A Review of the Implementation of UNHCR's Urban Refugee Policy in Kenya's Capital City*, Geneva, UNHCR, Jan. 2011; Pavanello et al., *Hidden and Exposed: Urban Refugees in Nairobi, Kenya*.

47 A. Fielden, *Local Integration: An Under-reported Solution to Protracted Refugee Situations*, Geneva, UNHCR, New Issues in Refugee Research, Research Paper No. 158, 2008, 10; Milner, *Refugees, the State and the Politics of Asylum in Africa*, 108s.; J. Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*, Geneva, UNHCR, New Issues in Refugee Research, Research Paper No. 255, 2013, 4s.; Rutinwa, 'The End of Asylum? The Changing Nature of Refugee Policies in Africa', 16; S. Turner, *Politics of Innocence: Hutu Identity, Conflict and Camp Life*, New York and Oxford, Berghahn Books, 2010, 10s.

48 Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*, 5.

49 Milner, *Refugees, the State and the Politics of Asylum in Africa*; Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*, 5.

50 Fielden, *Local Integration: An Under-reported Solution to Protracted Refugee Situations*, 10; S. Fransen and K. Kuschminder, *Back to the Land: The Long-term Challenges of Refugee Return and Reintegration in Burundi*, Geneva, UNHCR, New Issues in Refugee Research, Working Paper No. 242, Aug. 2012, 7s.; International Refugee Rights Initiative et al., 'Two People Can't Share the Same Pair of Shoes': *Citizenship, Land and the Return of Refugees to Burundi*, Kampala, International Refugee Rights Initiative et al., *Citizenship and Displacement in the Great Lakes Region Working Paper No. 2*, Nov. 2009; Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*; Turner, *Politics of Innocence: Hutu Identity, Conflict and Camp Life*, 11.

51 Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*, 7; B. Rutinwa, *Identifying Gaps in Protection Capacity: Tanzania*, Geneva, UNHCR, 2005, 41.

52 Asylum Access, *No Place Called Home: A Report on Urban Refugees Living in Dar Es Salaam*; Centre for the Study of Forced Migration and International Refugee Rights Initiative, 'I Don't Know Where To Go': *Burundian Refugees in Tanzania Under Pressure to Leave*, Kampala, International Refugee Rights Initiative, Sept. 2009, 3.

53 A. Betts, 'Can Uganda's Progressive Refugee Policies Survive the Influx of People Fleeing South Sudan?', *The Conversation*, Apr. 2017, available at: <http://theconversation.com/can-ugandas-progressive-refugee-policies-survive-the-influx-of-people-fleeing-south-sudan-75882> (last visited 15 Nov. 2019); International Refugee Rights, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*, Kampala, International Refugee Rights Initiative, Oct. 2018, 3.

Refugees Act with the 2006 Refugees Act, liberalising the provisions governing refugee protection.<sup>54</sup> Under the 1960 Control of Alien Refugees Act, refugees were assigned to settlements and prevented from leaving them, which, in turn, restricted their access to social and economic rights, including employment, health and education.<sup>55</sup> The 2006 Refugees Act (further operationalised by the 2010 Refugees Regulations) granted refugees recognised under both the 1951 Convention and the 1969 Convention most of the rights enshrined in the 1951 Convention, including property rights, access to education, the right to employment and self-employment, as well as freedom of movement, whereas conventional rights related to welfare were left out.<sup>56</sup>

However, the relationship between the provisions of the 2006 Refugees Act and general immigration laws remains unclear and provides the basis for certain officials to continue applying the same restrictions on refugees as before. For instance, there is disagreement among government entities whether refugees are exempted from obtaining a work permit.<sup>57</sup> According to Ruadel and Morrison-Métois, '[w]hile in principle refugees granted status can settle either in urban areas or in rural refugee settlements, in practice the Ugandan government has favoured a policy of confinement of refugees to settlements'.<sup>58</sup> According to Bernstein and Okello, laws are designed and implemented in such a way as to pressure refugees into settlements.<sup>59</sup> Although section 30(1) of the 2006 Refugees Act grants freedom of movement to all refugees in Uganda, section 30(2) provides that this right may be restricted in line with the laws of Uganda or the directions of the Commissioner for Refugees applicable to aliens generally in the same circumstances and that the Minister for Refugees may designate public lands for the local settlement and integration of recognised refugees and that refugees who wish to reside elsewhere must apply for permission – 'movement passes' – delivered according to criteria established in law or in practice, or subject to the arbitrariness of the Camp Commander (section 44(1) lit. b of the 2006 Refugees Act).<sup>60</sup> These laws are enforced to varying degrees. Exceptions and permits are granted in medical cases, but also in cases related to work or education, as well as sometimes if a refugee can prove that they are able to sustain themselves.

Although the Ugandan authorities insist on the difference between a camp and a settlement, Ugandan refugee settlements do not differ much from camps to be found in other countries.<sup>61</sup> As described above, the settlement policy that aimed at enabling refugees to be self-sufficient was a core element of the Tanzanian refugee policy prior to the 1990s.<sup>62</sup> And the realities of life in the Ugandan settlements are not fundamentally different from the realities of life in camps elsewhere: refugees face similar security threats, restrictions and challenges.<sup>63</sup> Land leased to refugees is often inadequate and scarce.<sup>64</sup> This is especially true for the settlements established in the wake of the mass influx

54 International Refugee Rights, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*, 7; U. Krause, 'Humanitären Flüchtlingschutz entwicklungsorientiert gestalten? Erfahrungen aus Uganda', *Flüchtlingsforschungsblog*, Aug. 2016, available at: <https://fluechtlingsforschung.net/humanitaeren-fluechtlingschutz-entwicklungsorientiert-gestalten/> (last visited 15 Nov. 2019); M. Sharpe and S. Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006', *International Journal of Refugee Law*, 24(3), 2012, 561–578, 565s.

55 International Refugee Rights, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*, 4; Kaiser, 'Between a Camp and a Hard Place: Rights, Livelihood and Experiences of the Local Settlement System for Long-term Refugees in Uganda', 601s.; U. Krause, *Linking Refugee Protection with Development Assistance: Analyses with a Case Study in Uganda*, Baden-Baden, Nomos, 2013, 148s.; U. Krause, 'Nachhaltige Entwicklung und Menschenrechtsschutz für Flüchtlinge? Eine Diskussion am Beispiel Ugandas', in M.-I. N. Hasenkamp and M. Brosig (eds.), *Menschenrechte, Bildung und Entwicklung. Bestandsaufnahme ihrer Zusammenhänge*, Opladen, Budrich UniPress, 2015, 214s.; Lomo, 'The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work', 281.

56 E. Andersson, *Political Rights for Refugees in Uganda: A Balance Between Stability in the State and Respect for Human Rights*, Umeå, Universitet Umeå, 2013; Sharpe, *The Regional Law of Refugee Protection in Africa*, 85; Sharpe and Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006', 567.

57 N. Omata, *Refugee Livelihoods and the Private Sector: Ugandan Case Study*, Oxford, Refugee Studies Centre, Working Paper Series No. 86, Nov. 2012, 9; H. Ruadel and S. Morrison-Métois, *Responding to Refugee Crises: Lessons from Evaluations in Ethiopia and Uganda as Countries of Destination*, Paris, OECD, 2017, 9; Sharpe and Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006', 577s.

58 Ruadel and Morrison-Métois, *Responding to Refugee Crises: Lessons from Evaluations in Ethiopia and Uganda as Countries of Destination*, 9.

59 J. Bernstein and M. C. Okello, 'To Be or Not To Be: Urban Refugees in Kampala', *Refuge*, 24(1), 2007, 46–56, 47.

60 International Refugee Rights Initiative, *South Sudanese Refugees in Adjumani District, Uganda: Telling a new Story?*, Kampala, International Refugee Rights Initiative, Jul. 2015, 10; Sharpe and Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006', 573.

61 E. Bagenda et al., *Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda*, Kampala, Refugee Law Project, Working Paper No. 8, May 2003; Bernstein and Okello, 'To Be or Not To Be: Urban Refugees in Kampala'; International Refugee Rights, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*, 3; Kaiser, 'Between a Camp and a Hard Place: Rights, Livelihood and Experiences of the Local Settlement System for Long-term Refugees in Uganda'; Milner, *Refugees, the State and the Politics of Asylum in Africa*, 2; Refugee Law Project, 'There Are No Refugees In This Area': *Self-Settled Refugees in Koboko*, Kampala, Refugee Law Project, Working Paper No. 18, Nov. 2005, 3; Ruadel and Morrison-Métois, *Responding to Refugee Crises: Lessons from Evaluations in Ethiopia and Uganda as Countries of Destination*.

62 Milner, *Refugees, the State and the Politics of Asylum in Africa*, 2.

63 U. Krause, 'Wie bewältigen Flüchtlinge die Lebensbedingungen in Flüchtlingslagern? Ergebnisse einer empirischen Analyse zu kongolesischen Flüchtlingen in Uganda', *Zeitschrift für Friedens- und Konfliktforschung*, 5(2), 2016, 189–220, 190.

64 Bagenda et al., 'Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda'; Z. Lomo, 'Refugees in East Africa: Developing an Integrated Approach', in D. A. Bekoe (ed.), *East Africa and the Horn: Confronting Challenges to Good Governance*, Boulder,

of South Sudanese refugees in Northern Uganda, beginning in 1992.<sup>65</sup> According to Ugandan land laws, most of the land in Northern Uganda is community land and it can therefore not as easily be disposed of by the government as land in Western Uganda, where older refugee settlements have been established in the past. Negotiations with local communities have become more complicated since the opportunity for these communities to regain control of their land and potential investments after the refugees' repatriation or return has vanished given the protracted character of the refugee situations affecting the region.<sup>66</sup> According to Bernstein and Okello, the legal framework 'barely protects and only minimally enhances refugee livelihoods'.<sup>67</sup> To sum up, the Ugandan refugee protection system is much less progressive and unique than its international perception.<sup>68</sup>

The figure of the camp in today's refugee policy can serve as a basis to demonstrate that refugee reception in East African jurisdictions does not fundamentally differ from refugee reception in the EU. Drawing from the conceptual work of Arendt<sup>69</sup> and Agamben<sup>70</sup> the camp is described as a place that withdraws its inhabitants from the sphere of general social interactions and places them in a state of rightlessness. As Jansen explains, '[b]oth metaphorically and physically, the notion of a camp suggests a demarcation of what is inside and what is outside – a rigid disconnection between the two: a separation'.<sup>71</sup> Camps may be 'constructed as temporary spaces to meet the immediate needs of the forcibly displaced'<sup>72</sup> and 'regarded as temporary settlements, organised according to the functionality of humanitarian operations'<sup>73</sup> but, more often than not, refugees end up staying in these structures despite them being ill-suited to meeting the needs of a long-term stay.<sup>74</sup> The persistent humanitarian character of an indefinite emergency structure ensures the preservation of bare life but nothing more; humanitarian action is not designed to promote rights-based approaches. As bare life, refugees thus do survive at the mercy of the camp management, be it the host country or UNHCR, but they are deprived of agency.<sup>75</sup> However, critics have highlighted that refugees do engage with multiple facets of the law to structure the interaction among themselves and with authority.<sup>76</sup>

Obviously, the camp metaphor is not an accurate and strictly factual description of the situation of people in Dadaab, Kakuma or the Ugandan settlements, in the hotspots in Greece and Italy or in large-scale reception facilities in Germany where the recourse to law is not impossible. Nevertheless, the metaphor may be useful to perceive and understand the extent to which all these refugee reception systems are fundamentally the same rather than different. The difference between living in a refugee settlement in Uganda and being assigned to residence in a municipal shelter in Germany or a refugee camp on the Greek islands is thus not of a fundamental nature.

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Lynne Rienner, 2005; Ruauudel and Morrison-Métois, *Responding to Refugee Crises: Lessons from Evaluations in Ethiopia and Uganda as Countries of Destination*, 9.

65 Bagenda et al., 'Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda'; U. Krause, 'Analysis of Empowerment of Refugee Women in Camps and Settlements', *Journal of Internal Displacement* 4(1), 2014, 28–52, 39s.; Krause, *Linking Refugee Protection with Development Assistance: Analyses with a Case Study in Uganda*, 146s.; Ruauudel and Morrison-Métois, *Responding to Refugee Crises: Lessons from Evaluations in Ethiopia and Uganda as Countries of Destination*.

66 Bagenda et al., 'Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda'.

67 Bernstein and Okello, 'To Be or Not To Be: Urban Refugees in Kampala', 47.

68 International Refugee Rights, *Uganda's Refugee Policies: The History, the Politics, the Way Forward*, 3; Sharpe and Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006'.

69 H. Arendt, *The Origins of Totalitarianism*, New York, Harcourt Brace Jovanovich, 1951.

70 G. Agamben, *Homo sacer. Il potere sovrano e la nuda vita*, Turin, Giulio Einaudi, 1995.

71 Jansen, "'Digging Aid": The Camp as an Option in East and the Horn of Africa', 149.

72 Sytnik, 'Rights Displaced: The Effects of Long-term Encampment on the Human Rights of Refugees', 12.

73 Jansen, 'The Accidental City: Urbanisation in an East-African Refugee Camp'.

74 Sytnik, 'Rights Displaced: The Effects of Long-term Encampment on the Human Rights of Refugees', 12.

75 Iyer Siddiqi, 'Dadaab (Kenya). L'histoire architecturale d'un territoire non identifié'; Jansen, 'The Accidental City: Urbanisation in an East-African Refugee Camp'; B. J. Jansen, 'Two Decades of Ordering Refugees: The Development of Institutional Multiplicity in Kenya's Kakuma Refugee Camp', in D. Hilhorst (ed.), *Disaster, Conflict and Society in Crises*, London and New York, Routledge, 2013, 114–131; Jansen, 'Kakuma (Kenya). Le camp dans l'économie de la ville, de la région et du monde'; Jansen, "'Digging Aid": The Camp as an Option in East and the Horn of Africa'; B. J. Jansen, 'The Protracted Refugee Camp and the Consolidation of a "Humanitarian Urbanism"', *International Journal of Urban and Regional Research*.

76 E. Holzer, 'What Happens to Law in a Refugee Camp?', *Law and Society Review*, 47(4), 2013, 837–872; Jansen, 'Two Decades of Ordering Refugees: The Development of Institutional Multiplicity in Kenya's Kakuma Refugee Camp', 14.



## 4. Durable solutions

Durable solutions can be applied to the situation of any refugee in any given country, but they carry a particular importance in the context of protracted refugee situations.<sup>77</sup> Traditionally, UNHCR has proposed three durable solutions to refugee situations: voluntary repatriation, local integration and resettlement. Following the New York Declaration, by which the United Nations pledged to increase efforts for refugee protection and durable solutions, the Global Compact on Refugees has complemented this traditional approach with pathways for admission to third countries, and other local solutions.

### 4.1 Voluntary repatriation

Voluntary repatriation in conditions of safety and dignity remains the first and foremost durable solution. This focus on repatriation shows to what extent the international refugee protection regime is governed by a static and homogenous understanding of the nation-state, where the preservation of construed national identities has prominence over the integration of the 'other' and the deepening of more diverse societies.

In the EU, whereas voluntary repatriation is an option proposed to recognised refugees, the debate about return and repatriation focuses on the status of the person concerned: status holders may not be returned against their will, but those without status (whether it was not granted or withdrawn at a later date) may, subject to specific safeguards under general immigration law. European courts have been quite assertive of fundamental rights regarding detention and deportation and European refugee law has provided some guidance on standards regarding voluntary repatriation which can be seen as a durable solution for refugee situations only if respectful of human rights.<sup>78</sup>

In East Africa, the debate on return and repatriation is intricately linked to the debate about cessation; it is particularly relevant in the context of Kenya (especially with regard to Somali refugees), Tanzania (especially with regard to Burundian refugees) and the overall situation of Rwandan refugees. Cessation of refugee status and the subsequent repatriation of Rwandan refugees in the region has been described extensively<sup>79</sup> and shall therefore remain beyond the scope of this paper.

On 29 April 2016, the Kenyan government revoked the *prima facie* status of Somali refugees and thus made a first step to concretise its plans to repatriate the Somali refugee population to Somalia. Subsequently, on 6 May 2016, it issued a directive to close its Department of Refugee Affairs and the refugee camps in Dadaab and Kakuma. The closure of the Department for Refugee Affairs was confirmed in a statement of 10 May 2016 and a Task Force to implement repatriation to Somalia was created. However, a decision issued by the High Court at Nairobi (Milimani Bench) on 9 February 2017 (Constitutional Petition 227 of 2016 – *Kenya National Commission On Human Rights & Another v Attorney General & Others*) declared that revoking refugee status of Somali refugees was non-compliant with the Kenyan Constitution and the *non-refoulement* principle, and that the government acted *ultra vires* regarding its decision to close the Department of Refugee Affairs. The government was thus forced to abandon its plans to close the refugee camps and to repatriate all Somali refugees and chose to focus instead on widening and improving its policy of voluntary repatriation to Somalia.

This policy is not strictly new: between 1990 and 2005, Kenya had already repatriated more than a million Somali refugees to Somalia on a voluntary basis (which was often spontaneous and/or family instigated), with active support of UNHCR; the efficiency of this policy was contested.<sup>80</sup> In this case as well, both the voluntary character and the overall efficiency of the repatriation schemes are contested.<sup>81</sup> Indeed, the Kenyan government itself refrains from qualifying its repatriation measures as voluntary, emphasising instead their 'humane' character and thus shifting the focus from a rights-based approach towards merely humanitarian considerations.<sup>82</sup>

As mentioned earlier, Tanzania tightened its refugee policy after the failure of the international community to stand by its commitment for financial support in the context of the naturalisation of the 1972 Burundian refugees.<sup>83</sup> In July 2012, the Tanzanian president announced that all refugee camps sheltering refugees from Burundi would be closed by the end of that year; subsequently, it was announced that the refugee status of the population concerned by the announcement (mostly Burundians that have arrived in Tanzania in the 1990s) would be withdrawn.<sup>84</sup> The Tanzanian

77 Milner, *Refugees, the State and the Politics of Asylum in Africa*; J. Milner and G. Loescher, *Responding to Protracted Refugee Situations: Lessons from a Decade of Discussion*, Oxford, Refugee Studies Centre, Forced Migration Policy Briefing No. 6, Jan. 2011; Sytnik, 'Rights Displaced: The Effects of Long-term Encampment on the Human Rights of Refugees'.

78 Crisp, 'Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions', 17s.

79 G. Cole, 'Negotiating Durable Solutions for Refugees: A Critical Space for Semiotic Analysis', *International Journal for the Semiotics of Law*, 29(1), 2016, 9–27, 14s.; International Refugee Rights Initiative et al., *A Dangerous Impasse: Rwandan Refugees in Uganda*, Kampala, International Refugee Rights Initiative et al., Citizenship and Displacement in the Great Lakes Region Working Paper No. 4, Jun. 2010.

80 Lindley, 'Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya', 27s.

81 Norwegian Refugee Council, *Dadaab's Broken Promise: A Call to Reinstate Voluntary, Safe and Dignified Returns for the Dadaab Refugee Community*, Oslo, Norwegian Refugee Council, Oct. 2016, available at: [www.nrc.no/globalassets/dadaabs-broken-promise-an-nrc-report-10.10.16.pdf](http://www.nrc.no/globalassets/dadaabs-broken-promise-an-nrc-report-10.10.16.pdf) (last visited 15 Nov. 2019).

82 Sharpe, *The Regional Law of Refugee Protection in Africa*, 79.

83 O. Kweka, 'Citizenship without integration: The Case of 1972 Burundian Refugees in Tanzania', *African Review*, 42(2), 2015, 76–93.

84 International Refugee Rights Initiative and Rema Ministries, *An Urgent Briefing on the Situation of Burundian Refugees in Mtabila*

refugee system is now arguably the most restrictive in the region. In closed camps, refugees are deprived of a wide range of rights, with limited access to resources. They are thus victims of severe violations of their social and economic rights. In such a situation, voluntary repatriation is the result of a choice between starvation and persecution and one may legitimately doubt to what extent it may be considered as truly voluntary. The arbitrary character of an approach that disregards evidence of ongoing persecution in Burundi<sup>85</sup> is made even more obvious by the fact that the other major host countries for Burundian refugees – the Democratic Republic of the Congo and Rwanda – did not opt for a policy of repatriation until now.<sup>86</sup>

The discrepancy between the debate in Europe and the debate in parts of East Africa may be due to the fact that cessation of refugee status is to be determined in an individual procedure under European refugee law, whereas most non-European countries, including East African countries, usually apply the cessation clause to collective refugee situations.<sup>87</sup>

## 4.2 Local integration and other local solutions

Where voluntary repatriation is not an option, local integration and other local solutions may serve as durable solutions to refugee situations.<sup>88</sup> The Global Compact on Refugees states that such other local solutions should facilitate the economic, social and cultural inclusion of refugees but it remains silent on how these local solutions would differ from local integration of refugees in the traditional sense. Local integration or inclusion may in any case be furthered and achieved with both factual and legal means.

While social networks and the acquisition of specific language and cultural skills are arguably the most relevant factual drivers of local integration, the legal framework governing the situation of refugees in the host country contributes to shape the opportunities for integration. In the EU, instruments and mechanisms that facilitate the acquisition of language, educational and professional skills as well as the understanding of fundamental values have been the most prominent features of the integration debate. This tends to obscure the fact that certain rights linked to the residence status of refugees have a profound impact on their ability and willingness to identify themselves with the host societies: access to permanent residence and citizenship. These may be described as legal drivers of local integration.

Most EU Member States provide for an access to permanent residence upon completion of certain requirements and, eventually, for naturalisation. This is not the case in East African jurisdictions. Refugees are considered to be in the host country for a limited amount of time. The system of land allocation in Uganda exemplifies this approach, since it is never given, but always leased to the refugees. There is therefore no path to permanent residence, except marriage with nationals of the host country. Adding to this, East African countries are traditionally reluctant to grant citizenship and the pathway to citizenship is paved with a score of obstacles grounded in constitutional and legal, but above all post-colonial, ethnic and identity-related concerns.<sup>89</sup> Even where the law provides for the possibility of naturalisation, it is seldom applied to refugees, a practice that has been dubbed as illegal by the Constitutional Court of Uganda in a Judgment of 6 October 2015 (Petition No. 34 of 2010). Despite this recent progress, refugees still face the problem that most African countries expect applicants for citizenship to relinquish their former citizenship, an obligation that is not easily met by refugees who either lack the documents necessary to overcome the bureaucratic obstacles in the relevant procedures, or may not want to inform the authorities of their country of origin on their whereabouts, for fear of persecution.

There have been cases, however, where countries of asylum have granted citizenship to large numbers of refugees in

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*Camp in Tanzania*, Bujumbura and Kampala, International Refugee Rights Initiative and Rema Ministries, Aug. 2012, available at: [http://citizenshiprights4africa.org/wp-content/uploads/2016/07/IRRI\\_Mtabila-briefing\\_2012.pdf](http://citizenshiprights4africa.org/wp-content/uploads/2016/07/IRRI_Mtabila-briefing_2012.pdf) (last visited 15 Nov. 2019), 1.

85 Amnesty International, *Conform or Flee: Repression and Insecurity Pushing Burundians into Exile*, London, Amnesty International, Sept. 2017; Fédération internationale des ligues des droits de l'Homme and La Ligue burundaise des droits de l'Homme – Ligue ITEKA, *Burundi. Répression aux dynamiques génocidaires*, Bujumbura and Paris, Fédération internationale des ligues des droits de l'Homme and La Ligue burundaise des droits de l'Homme – Ligue ITEKA, Nov. 2016, available at : [www.fidh.org/IMG/pdf/rapport\\_burundi\\_une\\_repression\\_aux\\_dynamiques\\_genocidaires.pdf](http://www.fidh.org/IMG/pdf/rapport_burundi_une_repression_aux_dynamiques_genocidaires.pdf) (last visited 15 Nov. 2019); Fédération internationale des ligues des droits de l'Homme and La Ligue burundaise des droits de l'Homme – Ligue ITEKA, *Le Burundi au bord du gouffre: retour sur deux années de terreur*, Bujumbura and Paris, Fédération internationale des ligues des droits de l'Homme and La Ligue burundaise des droits de l'Homme – Ligue ITEKA, Jun. 2017, available at: [www.fidh.org/IMG/pdf/burundi\\_rapportconjoint\\_juin2017\\_fr\\_final\\_vweb.pdf](http://www.fidh.org/IMG/pdf/burundi_rapportconjoint_juin2017_fr_final_vweb.pdf) (last visited 15 Nov. 2019); L. Hovil and O. Bueno, *'I Know the Consequences of War': Understanding the Dynamics of Displacement in Burundi*, Kampala, International Refugee Rights Initiative, Dec. 2016; International Refugee Rights Initiative, *Burundi: A Country on the Edge*, Kampala, International Refugee Rights Initiative, Apr. 2016.

86 M. T. Sy Issaka, *Analyse de l'impact des camps de réfugiés burundais sur la dynamique des conflits sociaux / Violences et violations des droits de l'homme, cas du camp de Lusenda en territoire de Fizi (Sud-Kivu)*, Bujumbura, Université du Burundi, 2017; E. Uwizeyimana, 'La transition humanitaire dans le camps des réfugiés burundais de Mahama: réalités et nécessité', Paris, Fonds Croix-Rouge française, Les Papiers du Fonds No. 11, Feb. 2017.

87 Durieux and Hurwitz, 'How Many Is Too Many? African and European Legal Responses to Mass Influxes of Refugees', 114.

88 Fielden, *Local Integration: An Under-reported Solution to Protracted Refugee Situations*.

89 B. Manby, *Struggles for Citizenship in Africa*, London and New York, Zed Books, 2009; L. Hovill, *Aligning Refugee Policies with Refugee Realities*, Kampala, International Refugee Rights Initiative, 2017; Interpeace *Manipulation des identités et stéréotypes. Enjeux et défis pour la paix dans la région des Grands-Lacs*. Nairobi, Interpeace, 2013; Johnson, *Kongo. Kriege, Korruption und die Kunst des Überlebens*, 202s.; F. Nyamnjoh, 'From Bounded to Flexible Citizenship: Lessons from Africa', *Citizenship Studies*, 11(1), 2007, 73–82; S. Sitya, 'Les mouvements citoyens, outils de construction d'une citoyenneté à identités multiples', *Cahiers du Mapinduzi*, 5, 2017, 40–44.



an effort to facilitate their integration. The most prominent case is the naturalisation of the 1972 Burundian refugees in Tanzania since 2007, a country with a tradition of *ad hoc* naturalisations of refugees dating back to the 1950s.<sup>90</sup> The Tanzanian naturalisation plan was accompanied by several measures that were supposed to facilitate local integration for the beneficiaries and the international community pledged financial support. Due to a variety of reasons arising from the failure of the international community to live up to its commitments, but also poor planning and execution and a lack of political will, the objectives were not met in a satisfactory way. The refugees naturalised since 2007 are perceived as second-class citizens, their relocation within Tanzania failed and, above all, the failure of the international community led to the implementation of more restrictive refugee policies in Tanzania that make another attempt at naturalising refugees still present in the country extremely unlikely.<sup>91</sup>

### 4.3 Resettlement and complementary pathways for admission to third countries

The third durable solution, resettlement, stresses the importance of international cooperation and responsibility-sharing for the functioning of the international refugee protection regime, as addressed in the Preambles of the 1951 Convention and the 1969 Convention and highlighted in the New York Declaration and the Global Compact on Refugees.<sup>92</sup> The Global Compact on Refugees states that other pathways for admission to third countries should complement resettlement as another durable solution for refugee situations. Such pathways may include family reunification, private and community sponsorship, humanitarian visas, student visas and labour mobility. Although such mechanisms may provide protection to individuals under certain circumstances, their promotion as an equivalent to durable solutions in the traditional sense carries the risk of eroding the standards of refugee protection in international law.<sup>93</sup> They shall remain beyond the scope of this paper.

As a contribution to international refugee protection, the EU launched a Joint Resettlement Programme in 2012. However, following the Agreement between the EU Member States and Turkey of 18 March 2016, resettlement to the EU mostly benefits refugees from specific countries, and especially Syria. Thus, resettlement has arguably been subverted from an instrument of protection into a tool for containment. It lost focus on protracted refugee situations, on particularly vulnerable persons and on international solidarity. The developments in the EU are not without any influence on other world regions in which protracted refugee situations persist, such as East Africa.<sup>94</sup> The countries in the region are home to large refugee populations from, *inter alia*, the Democratic Republic of the Congo and Somalia. As described, recent developments in European refugee policy have led the Kenyan government to consider withdrawing the protection it offers to Somali refugees. This would have serious implications for the international refugee protection regime. Protracted refugee situations are not only highly detrimental to the rights of the people concerned and a security issue but, more profoundly, they are also paradigmatic of a tendency to deny people the right to have rights, and thus constitute a normative threat to human rights in general.<sup>95</sup>

However, East African countries have stepped in with proposals to act as resettlement countries themselves.<sup>96</sup> Following reports of African migrants and refugees being tortured in Libya, the President of Rwanda, Paul Kagame, proposed

90 Fielden, *Local Integration: An Under-reported Solution to Protracted Refugee Situations*, 10; Fransen and Kuschminder, *Back to the Land: The Long-term Challenges of Refugee Return and Reintegration in Burundi*, 9; Kweka, 'Citizenship Without Integration: The Case of 1972 Burundian Refugees in Tanzania', 81; Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*, 4; J. Milner, 'Can Global Refugee Policy Leverage Durable Solutions? Lessons from Tanzania's Naturalization of Burundian Refugees', *Journal of Refugee Studies*, 27(4), 2014, 553–573, 558.

91 International Refugee Rights Initiative, 'I Can't be a Citizen if I am Still a Refugee.' *Former Burundian Refugees Struggle to Assert their New Tanzanian Citizenship*, Kampala, International Refugee Rights Initiative, Citizenship and Displacement in the Great Lakes Region Working Paper No. 8, Mar. 2013; Kweka, 'Citizenship Without Integration: The Case of 1972 Burundian Refugees in Tanzania', 83s.; Milner, *Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania*, 1; Milner, 'Can Global Refugee Policy Leverage Durable Solutions? Lessons from Tanzania's Naturalization of Burundian Refugees'.

92 A. Betts, 'Historical Lessons for Overcoming Protracted Refugee Situations', in G. Loescher *et al.* (eds.), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, Tokyo, United Nations University Press, 2008, 162–185; B. J. Jansen, 'Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp, Kenya', *African Affairs*, 107, 2008, 569–587, 570; Milner, *Refugees, the State and the Politics of Asylum in Africa*, 39s., 170s.; Rutinwa, 'The End of Asylum? The Changing Nature of Refugee Policies in Africa', 36.

93 C. Tometten, 'Resettlement, Humanitarian Admission, and Family Reunion: The Intricacies of Germany's Legal Entry Regimes for Syrian Refugees', *Refugee Survey Quarterly*, 37(2), 2018, 187–203.

94 Crisp, 'Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions', 13s.; Campbell *et al.*, *Navigating Nairobi: A Review of the Implementation of UNHCR's Urban Refugee Policy in Kenya's Capital City*, 40; D. Hillhorst and B. J. Jansen, 'Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid', *Development and Change*, 41(6), 2010, 1117–1139, 1124s.; International Refugee Rights Initiative, *Shadows of Return: The Dilemmas of Congolese Refugees in Rwanda*, Kampala, International Refugee Rights Initiative, Citizenship and Displacement in the Great Lakes Region Working Paper No. 6, Kampala, International Refugee Rights Initiative, Jul. 2011; Jansen, 'Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp, Kenya'; Jansen, 'Digging Aid': The Camp as an Option in East and the Horn of Africa', 150s.; Kagwanja and Juma, 'Somali Refugees: Protracted Exile and Shifting Security Frontiers'; Kaiser, 'Sudanese Refugees in Uganda and Kenya'; Lindley, 'Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya'; Ruauadel and Morrison-Métois, *Responding to Refugee Crises: Lessons from Evaluations in Ethiopia and Uganda as Countries of Destination*; Sharpe and Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006'.

95 Sytnik, 'Rights Displaced: The Effects of Long-term Encampment on the Human Rights of Refugees', 26.

96 Milner, *Refugees, the State and the Politics of Asylum in Africa*, 40.

to resettle 30,000 victims to Rwanda in November 2017.<sup>97</sup> It remains to be seen to what extent this proposal will be implemented, whether the beneficiaries will be recognised as refugees subsequently or what other residence status they will be provided with, and which rights they will be entitled to upon arrival. Rwanda has so far failed to specify its proposal. UNHCR raises concerns whether resettled refugees would actually stay in Rwanda and the experience from the cooperation of Israel and Rwanda regarding Eritrean and Sudanese refugees makes these legitimate. As Mignone argued on a panel at the Hohenheimer Tage zum Migrationsrecht in Stuttgart on 28 January 2018, it would be more realistic to establish an Emergency Transit Mechanism in Rwanda, based on the experience in Niger. In such Emergency Transit Mechanisms, refugees are screened in order to prepare their possible departure to the traditional countries of resettlement in North America, Oceania and Europe. As all destination countries have relatively strict policies on resettlement that make a score of such screenings mandatory, such mechanisms are essential for the implementation of relatively generous resettlement programmes.

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97 A. Shaban, 'Rwanda Agrees to Resettle 30,000 Africans Enslaved in Libya', *Africa News*, Nov. 2017, available at: [www.africanews.com/2017/11/23/rwanda-agrees-to-resettle-30000-africans-enslaved-in-libya/](http://www.africanews.com/2017/11/23/rwanda-agrees-to-resettle-30000-africans-enslaved-in-libya/) (last visited 15 Nov. 2019); Sharpe, *The Regional Law of Refugee Protection in Africa*, 77.

## 5. Conclusion

Tracing the similarities and discrepancies of the Common European Asylum System and the refugee protection systems in East African jurisdictions, this paper has described the laws and policies governing refugee status and procedural rights, refugees' access to social, economic and other rights, as well as durable solutions.

First, it was found that, on the one hand, the 1969 Convention refugee definition and the EU concept of subsidiary protection share a similar approach that enhances refugee protection. Certain forms of persecution, however, are not recognised as falling within the ambit of refugee law in East African jurisdictions. On the other hand, safe country concepts have contributed to the deterioration of procedural standards in the status determination procedure and thus restricted access to protection in the EU, and these concepts are similar to laws and policies in East African jurisdictions, including the implementation of the agreements on the deportation of Eritrean and Sudanese asylum-seekers from Israel to Rwanda and Uganda.

Second, regarding refugees' access to economic, social and other rights, it was found that the figure of the camp is equally applicable to the context of East Africa and to reception facilities in the EU. The confinement of refugees to such structures entails similar restrictions to their rights pending the determination of their status, but refugees tend to be granted a wider set of rights subsequent to their status determination in the EU than in East African jurisdictions.

Third, on durable solutions, it was found that status determination as a pivotal moment that fundamentally improves the situation of an individual who is granted international protection in the EU and opens the prospect of permanent residence and citizenship lacks an equivalent in East African jurisdictions, where confinement to camps and settlements remains the norm for status holders and where pathways to permanent residence and citizenship remain narrow to non-existent. In East African jurisdictions, return and repatriation are often discussed in the context of cessation of refugee status and emphasis is put on its voluntary character, whereas the European discourse tends to focus on rejected asylum-seekers and their deportation. The EU has found a relatively new interest in resettlement but tends to conceive of it as a tool to manage refugee movement and to prevent spontaneous arrivals. Most East African jurisdictions do not consider themselves as potential resettlement countries, with the possible exception of Rwanda. It remains to be seen, however, whether the Rwandan announcement of intention to resettle African refugees from Libya will contribute to enhancing international refugee protection.

In light of the New York Declaration and the Global Compact on Refugees, these findings show that the EU's pledges for international cooperation and responsibility-sharing contrast with its actual policies and laws. Whereas the Common European Asylum System has improved the situation for status holders in the EU, it has made access to protection much harder. Countries of origin and transit countries, including East African countries, bear the brunt of these developments, and there is therefore little incentive for them to liberalise their own refugee protection systems. If the commitment of the United Nations General Assembly to international cooperation and responsibility-sharing is to be more than lip service, the EU must reconsider its approach to refugee protection in order to live up to its commitments.